

REMARKS

The present Response is intended to fully address the objections and rejections raised in the outstanding Office Action mailed February 5, 2009 (the "Office Action") and is believed to place the subject application in condition for allowance. Thus, favorable reconsideration of the subject application is respectfully requested. Applicant does not acquiesce to any portion of the Office Action not particularly addressed herein.

In the Office Action, the following issues were raised:

- Claims 3-4, 6-9, 12-13, 21 and 25-28 were rejected under 35 U.S.C. §112, second paragraph, for allegedly failing to particularly point out and distinctly claim the subject matter of the invention.
- Claims 3-4, 6-9, 12-13, 21 and 25-28 were rejected under 35 U.S.C. §103(a) based on the teachings of US Patent Publication No. 2002/0059054 to Bade et al. ("Bade") in view of U.S. Patent No. 6,507,824 to Yon et al. ("Yon") or vice versa.

In view of the amendments and arguments advanced herein, Applicant submits that the issues outlined above are fully addressed and remedied. Thus, Applicant believes that each of the claims now pending in the application is in condition for allowance.

1. Examiner Interview

On February 25, 2009, a telephonic Interview with Examiner Dean Tan Nguyen was conducted. Applicant was represented by undersigned counsel and his colleague, Gabriel Goldman. Applicant extends appreciation to the Examiner for his courtesy in connection with the foregoing telephonic interview.

The interview lasted approximately one hour and primarily involved discussion of

various distinguishing elements disclosed and claimed in the pending application, including:

(1) “means for defining a plurality of specifier shades, a plurality of specifier substrates and a plurality of suppliers” (claim 25) (“using one of the specifier workstations and defining a plurality of specifier shades, a plurality of specifier substrates and a plurality of suppliers” (claim 26)); and

(2) “means for creating a nested e-palette for a set of goods” (claim 25) (“using the one of the specifier workstations and creating a nested e-palette for a set of goods” (claim 26)).

The above limitations were discussed within the context of the prior art cited in the Office Action. Applicant’s arguments mirrored those presented in the Letter Requesting Interview submitted on February 23, 2009, as supported by Applicant’s previous Amendment and Response dated November 6, 2008.

Applicant made reference to the Suggested Claim Amendments appended to the Letter Requesting Interview submitted on February 23, 2009, with respect to whether various claim limitations would be accorded patentable weight. It was noted that the proposed amendments reflected the Examiner’s suggestions made during an informal telephonic conversation on February 18, 2009. At the conclusion of the interview, Applicant agreed to review and, if necessary, amend the claims to ensure that positive non-functional limitations and elements are recited.

With respect to the arguments advanced during the Interview, the Examiner reserved final judgment on patentability until after having had an opportunity to review the specific distinctions noted, within the context of the amended claims. Of note, the Examiner indicated that Applicant’s attorney would be contacted by telephone if any new issues arose during subsequent review of the application in view of the present submission.

2. Claim Amendments

Pursuant to the Examiner's rejection of claims 25 and 26 under 35 U.S.C. §112, second paragraph, Applicant hereby amends claims 25 and 26 to improve the clarity thereof. Thus, Applicant amends step (e) of claim 26 to ensure proper antecedent basis by reciting "uploading the nested e-palette to the server." Applicant submits that no new matter is introduced by the foregoing amendment. Applicant also amends claims 25 and 26 to clarify that the submission data is uploaded to the server "if deviations between the sets of actual spectral data and the sets of spectral data associated with the uploaded nested e-palette are within acceptable limits." Support for the foregoing amendment can be found in paragraph [0075] of the subject application. Finally, Applicant amends the preamble of claims 25 and 26 to recite a system/method "for facilitating the creation, organization and exchange of information between specifiers and suppliers." Applicant submits that the foregoing amendment is for clarification purposes. More particularly, Applicant notes that the foregoing amendment merely involves a recitation of an intended use/purpose and, as such, should not be construed in a limiting manner.

In addition to the above clarifying amendments, Applicant also hereby amends claims 26-27, in accordance with the Examiner's suggestions, to recite positive, non-functional steps. For example, step (b) of claim 26 is amended to recite "using one of the specifier workstation and defining" instead of "using one of the specifier workstations to predefine." Similarly, Applicant amends section (a)(iii) of claim 25 and section (c) of claim 26 (relating to the nested e-palette construct) to recite positive non-functional limitations. Applicant submits that no new matter is introduced by the foregoing amendments.

In view of the foregoing remarks, Applicant respectfully requests prompt entry and consideration of the above claim amendments.

3. Rejections under 35 U.S.C. §112, Second Paragraph

In the Office Action, claims 3-4, 6-9, 12-13, 21 and 25-28 were rejected under 35 U.S.C. §112, second paragraph, for purportedly failing to particularly point out and distinctly claim the subject matter of the invention. More particularly, the following issues were raised with respect to clarity: (i) the phrase “uploading the nested e-palette to a server” in step (e) of claim 26 was found to be vague since it was unclear whether the server is the same as that in step (a); (ii) in claims 25 and 26, it was unclear what the effect of comparing the sets of actual spectral data to the sets of spectral data associated with the uploaded nested e-palette had on the subsequent uploading of the submission data; and (iii) in claims 25 and 26, it was unclear whether the facilitation of communication between specifiers and suppliers was met.

Regarding (i), Applicant amends claim 26 to recite “uploading the nested e-palette to the server.” Applicant submits that the foregoing amendment clarifies that the server in step (e) of claim 26 is the same as the server in step (a) of claim 26.

Regarding (ii), Applicant hereby amends claims 25 and 26 to recite the uploading of submission data to the server “if deviations between the sets of actual spectral data and the sets of spectral data associated with the uploaded nested e-palette are within acceptable limits.” Applicant submits that the foregoing amendment clarifies the connection between the uploading of submission data to the server and the comparing of the sets of actual spectral data with the sets of spectral data associated with the uploaded nested e-palette.

Finally, regarding (iii), Applicant amends the preamble of claims 25 and 26 to recite a system and a method, respectfully, “for facilitating the creation, tracking and exchange of information between specifiers and suppliers.” Applicant respectfully submits that the foregoing amendment provides a “general description of all the elements or steps of the claimed

combination,” as required under MPEP 608.01(i). Applicant notes, however, that the above recitation expresses a purpose or intended use and should not be construed as limiting the scope of claims 25 or 26. See MPEP 2111.02.

In view of the foregoing, Applicant submits that the pending claims are in full compliance with 35 U.S.C. §112 and respectfully requests the Examiner so find.

4. Rejections under 35 U.S.C. §103(a)

In the Office Action, claims 3-4, 6-9, 12-13, 21 and 25-28 were rejected under 35 U.S.C. §103(a) based on *Bade* in view of *Yon* or vice versa. In light of the foregoing amendments to the claims and the arguments presented herein, reconsideration and withdrawal of the above rejections is respectfully requested. Applicant notes that each of claims 3-4, 6-9 12-13, 21 and 27-28 depends directly or indirectly from independent claim 25 or claim 26. Thus, while Applicant does not acquiesce to the Examiner’s position with respect to any of the dependent claims, all outstanding rejections to the dependent claims are addressed solely within the context of claims 25 and 26.

A. Review of Prosecution History

Applicant notes that in the previous Office Action dated August 6, 2008 (the “previous Office Action”), the Examiner rejected then pending independent claims 1 (system), 15 (method) and 22 (system) as allegedly obvious over *Bade/Yon*. Therein, the Examiner stated:

BADE et al discloses a method for facilitating communications (or “...*collaborative method of designing systems...*” {see par. 0022}) between plurality of entities, 1st entity functions as a specifier and a 2nd plurality of entities function as plurality of suppliers, said method comprising:

a) receiving information from an order across a computer network at a server, the information originating from a 1st entity (specifier) workstation and including information about the project/design project, said information associated with the project defined by the 1st entity (specifier), the information associated with the project/design including a set of goods (product) and a predetermined set of suppliers; {see Figs. 2, 41, paragraphs [0009], [0023], [0108], [0111], and [0207]}

b) automatically communicating to said predetermined set of suppliers the existence of said project/project design at said server; and {see paragraphs [0207]-[0208], Figs. 8 and 44}

c) permitting remote access to said project/project design by said predetermined set of suppliers at said server. {see [0023] “...*a vendor to access a design published by a designer on the*”

bidding board... vendor may receive a request for quote that includes access privilege to the design..." [0207]}.

BADE et al fairly teaches the claimed invention except for the features of the information in the order/quote received contains specified color data spectra or e-palette information and information associated with the specified e-palette.

Similarly, YON et al discloses a method for facilitating communications between 2 entities, first entity serving as a specifier and a 2nd entity serving as one or more suppliers, said method comprising:

- a) receiving an order in the form of electronic (web) template/page or palette across a computer network at a server, said template/page (palette) originating from a specifier (customer or purchaser) workstation and including parameters related to said template/palette, said parameters including a set of goods (product) and a predetermined set of suppliers associated with said template/palette by said specifier (customer/purchaser); {see Figs. 1, 2, elements 32, 34, 36, 44, Fig. 4, elements 52, Fig. 6, 60, cols. 3, lines 5-65, col. 4, lines 5-40, col. 7, lines 1-65}
- b) automatically communicating to said predetermined set of suppliers the existence of said template/web page (palette) at said server; and {see Fig. 1, col. 3, lines 4-45, col. 7, lines 1-60}
- c) permitting remote access to said template/palette by said predetermined set of suppliers at said server. {see col. 3, lines 4-40, col. 7, lines 1-12, col. 8, lines 4-45}.

Note, as for the term "e-palette" which appears to be similar to electronic template or page or web page, this is taught in YON et al on cols. 3-4, Figs. 2-5. Note that on col. 4, lines 15-20, YON et al discloses the field (44) on Fig. 2 as "color palette field". Therefore, the teaching of Fig. 2 reads over "e-palette". Alternative, since the palettes of Fig. 2 and col. 4; lines 1-25 are transferred via electronically (via the Internet), it would have been obvious to change the name of web page or template in YON et al to e-palette if desired to indicate that the palette is carried out electronically.

It would have been obvious to modify the order information about the design project of BADE et al to include specified color data spectra or e-palette information and information associated with the specified e-palette as taught by YON et al if the design item requires color feature or desired color as taught by YON et al {see cols. 1-2, Figs. 2-6}.

Alternatively, YON et al fairly teaches the claimed invention except for a plurality of suppliers in the preamble and the access to the order information. It would have been obvious to modify the teachings by including the two features above as taught by BADE et al to allow effective or better bidding when multiple vendors or suppliers are involved and are competed against each other to inherently provide good service at lower cost.

In response to the Examiner's rejections in the previous Office Action, Applicant canceled each of independent claims 1 (system), 15 (method) and 22 (system) and advanced new independent claims 25 (system) and 26 (method) in their place. It is noted that new independent claims 25 and 26 differed substantively and substantially from the canceled independent claims 1, 15 and 22. Thus, in the previous Response dated November 6, 2008 (the "Previous Response"), Applicant argued that new independent claims 25 and 26 introduced numerous limitations that -- in the context of the claims-as-a-whole -- were not disclosed or made obvious by Bade/Yon and that, therefore, each of new independent claims 25 and 26 patentably

distinguished over Bade/Yon. The following distinguishing limitations were noted and discussed in particular:

- **“means for predefining a plurality of specifier shades, a plurality of specifier substrates and a plurality of suppliers” (claim 25); “using one of the specifier workstations to predefine a plurality of specifier shades, a plurality of specifier substrates and a plurality of suppliers” (claim 26);**
- **“means for creating a nested e-palette for a set of goods” (claim 25); “using the one of the specifier workstations to create a nested e-palette for a set of goods” (claim 26); and**
- **“means for filtering the one or more uploaded nested e-palettes” (claim 25).**

Applicant also presented arguments that the proposed combination of Bade and Yon represented impermissible hindsight noting that “[t]o arrive at the combination relied upon in rejecting the claims-at-issue, it is necessary to ignore core teachings of the cited references, wherein the only basis for doing so is Applicant’s disclosure/claims.”

Despite Applicant’s submission addressing the patentability of new claims 25 and 26 over Bade/Yon, the Examiner declined to substantively consider Applicant’s arguments stating only that “Applicant’s arguments...are moot in view of the new ground(s) of rejection which are caused by applicant’s amendment of the claims.” More particularly, the Examiner advised Applicant that steps (b), (c), (d), (g) and (i) in claim 26 were not accorded patentable weight for allegedly reciting mere intended use. Therefore, the Examiner did not substantively consider or address any of the noted distinguishing limitations discussed in the Previous Response. Rather, in addressing the remaining steps, the Examiner applied (word-for-word) the same reasoning used to reject claims 1, 15 and 22 in the Previous Office Action. The Examiner also rejected

independent claim 25, said to be “basically the system to carry out the independent method claims 26,” for the same reasons as claim 26 (“over the steps of BADE et al / YON et al or vice versa to carry out the elements as shown in the rejection of claim 26 above”).

By way of the present Response, Applicant amends claims 25 and 26 to recite limitations that are clearly positive and non-functional limitations. Thus, Applicant respectfully submits that the Examiner should now accord patentable weight to each of the recited elements and limitations in claims 25 and 26. Furthermore, as discussed during the Interview, claim 25 includes means plus function language which was entitled to patentable weight, even if the alleged functional limitations of claim 26 were not considered. Accordingly, Applicant respectfully requests that the Examiner reconsider the patentability arguments advanced in the Previous Response as restated herein with respect to amended claims 25 and 26. More particularly, Applicant respectfully requests that the Examiner substantively consider amended claims 25 and 26, in their entirety, on a limitation-by-limitation basis.

B. Obviousness Analysis

As is well known, the factual inquiries for evaluating “obviousness” under 35 U.S.C. §103 are set forth in Graham v. John Deere Co., 383 U.S. 1 (1966). These factors require that the Examiner: (1) determine the scope and content of the prior art, (2) ascertain the differences between the prior art and the claims-at-issue, (3) resolve the level of ordinary skill in the pertinent art, and (4) consider objective evidence present in the application (if any) indicating obviousness or nonobviousness.

The Federal Circuit has stated that “rejections on obviousness cannot be sustained with mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.” In re Kahn, 441 F.3d 977,

988 (Fed. Cir. 2006). Furthermore, “impermissible hindsight must be avoided and the legal conclusion must be reached on the basis of the facts gleaned from the prior art.” MPEP §2142. The mere fact that references can be combined or modified does not render the resultant combination obvious unless the results would have been predictable to one of ordinary skill in the art. KSR International Co. v. Teleflex Inc., 82 USPQ2d 1385, 1396 (2007). Moreover, where the teachings of two or more prior art references conflict, the examiner must weigh the power of each reference to suggest solutions to one of ordinary skill in the art, considering the degree to which one reference might accurately discredit another. In re Young, 927 F.2d 588 (Fed. Cir. 1991). MPEP §2143.01 also notes that both (1) “a proposed modification [that] would render the prior art invention being modified unsatisfactory for its intended purpose” and (2) “a proposed modification or combination of the prior art [that] would change the principle of operation of the prior art invention being modified” would therefore render insufficient a *prima facie* claim of obvious. See also In re Gordon, 733 F.2d 900 (Fed. Cir. 1984) and In re Ratti, 270 F.2d 810 (CCPA 1959).

Applicant respectfully submits that each of independent claims 25 and 26 patentably distinguishes over the proposed combination of Bade and Yon, at least because the claims include substantial and patentable differences relative to the teachings of the prior art references, whether taken alone or in combination. Applicant further submits that the application of a general network-based bidding system (Bade) to the highly specific color-based system/method of the subject application represents impermissible hindsight and, in fact, conflicts with the teachings of Bade. Accordingly, Applicant respectfully submits that the Examiner failed to establish a *prima facie* case for obviousness under 35 U.S.C. §103 at least with respect to independent claims 25 and 26.

a. Differences over the Prior Art:

Applicant respectfully submits that independent claims 25 and 26 includes numerous limitations not found in nor taught/suggested by Bade/Yon and that, therefore, each of independent claims 25 and 26 patentably distinguishes over Bade/Yon. The following distinguishing limitation are noted in particular:

- I. means for “defining” and “storing...in a specifier database” “a plurality of specifier shades, a plurality of specifier substrates and a plurality of suppliers” (claim 25); “using one of the specifier workstations and defining a plurality of specifier shades, a plurality of specifier substrates and a plurality of suppliers, wherein the defined pluralities of specifier shades, specifier substrates and suppliers are stored in a specifier database” (claim 26).**

In the Office Action, the Examiner equated the informational components (shades, substrates, suppliers, etc.) of a nested e-palette with IP components of a virtual embedded system disclosed in Bade (see page 6 of the Office Action; re: “information associated with the project/design”). Applicant respectfully traverses this determination of equivalence.

Thus, Applicant submits that Bade fails to disclose, *inter alia*, specifier means for defining and storing informational components in a database. Furthermore, Applicant submits that informational components in the subject application, such as shades, substrates, suppliers, etc., are not the same as the IP components in Bade. Indeed, the information components recited in the claims of the subject application distinguish over the prior art in that each is created by a specifier, i.e., using a specifier workstation. Thus, a specifier may advantageously create an individualized database of unique and expressive shades, substrates, suppliers. Defining of information components is also advantageous for facilitating the quick and easy creation of a nested e-palette (i.e., by simply selecting a hierarchy of desired informational components from the personalized database). Allowing a specifier to define information components is

particularly useful in color-specific applications. Indeed, color selection (i.e., for a product) is an exercise of subjective expression rather than objective design.

In contrast, Bade discloses an integrated design environment (IDE) which includes a library of “IP components from different sources.” See paragraph [0114]. “[A] user may select IP components of interest that they may add or in the case of hardware models modify for their own design.” *Id.* A user does not, however, define the IP components in Bade. Indeed, Bade teaches that the IP components match industry available parts wherein standardization is key. Thus, Bade clearly fails to disclose, e.g., creating an individualized database of unique user-defined IP components.

II. “means for creating a nested e-palette for a set of goods, said creating means including means for: (1) selecting, from the specifier database, a set of one or more of the plurality of specifier substrates, (2) associating the selected set of one or more specifier substrates with the set of goods, (3) selecting, from the specifier database, a set of one or more of the plurality of specifier shades to correspond with each substrate of the selected set of one or more specifier substrates, and (4) associating the corresponding selected set of one or more specifier shades with each substrate of the selected set of one or more specifier substrates” (claim 25); “using the one of the specifier workstations and creating a nested e-palette for a set of goods, wherein the creating a nested e-palette for a set of goods includes: (1) selecting, from the specifier database, a set of one or more of the plurality of specifier substrates, (2) associating the selected set of one or more specifier substrates with the set of goods, (3) selecting, from the specifier database, a set one or more of the plurality of specifier shades to correspond with each substrate of the selected set of one or more specifier substrates, and (4) associating the corresponding selected set of one or more specifier shades with each substrate of the selected set of one or more specifier substrates” (claim 26)

In the Office Action, the Examiner acknowledged that Bade fails to disclose “color data spectra or e-palette information and information associated with the specified e-palette.” (see page 7 of the Office Action). Thus, the Examiner relied on Yon in allegedly addressing the deficiencies of Bade. More particularly, the Examiner reasoned that “the term ‘e-palette’ which appears to be similar to electronic template or page or web page, this is taught in Yon et al. on cols. 3-4 Figs. 2-5.” Specifically, the Examiner noted that “Yon et al. discloses the field (44) on

Fig. 2 as “color palette field.” Therefore, the Examiner concluded that Fig. 2 reads on the term “e-palette.”

Applicant notes, however, that claims 25 and 26 presently define a particular data structure for a nested e-palette which was not addressed by the Examiner and which is not disclosed or made obvious by Yon. More particularly, claims 25 and 26 currently recite creating a nested e-palette by (1) selecting one or more substrates (e.g., cotton, nylon, leather, etc.), (2) associating the one or more substrates with a set of goods (e.g., a fall clothing line), (3) selecting one or more shades to correspond with each of the one or more substrates, and (4) associating the one or more corresponding shades with each of the one or more substrates. Thus, Applicant submits that Yon fails to disclose a nested e-palette as characterized in the claims. More particularly, Applicant submits that Yon fails to disclose each of the above limitations (1-4).

In general, Applicant notes that Yon discloses a web template (Fig. 2) for ordering a desired color product, e.g., paint, cyclocac, etc. (see Fig. 5). The web template includes a color palette field for designating a color for the color product. Applicant notes that the color selection in Yon is of a color for a color product prior to its application on a substrate.

In contrast, the subject application discloses a system advantageously suited for, *inter alia*, creating, organizing and exchanging information related specifically to a given product-line. Indeed, the nested e-palette construct enables a specifier to design and track color and substrate characteristics for a given product line. Furthermore, the nested structure of the nested e-palette allows the specifier to tie together a product line using common elements; e.g., a product-line may feature a plurality of products, each manufactured from one or more common substrates, wherein the shades for the substrates are drawn from a common color palette (hence the term “e-palette”). Furthermore, since each substrate is associated with one or more shades, the spectral

data defining each shade is representative of a desired final color of the substrate (post-application) rather than an original color of a color product (pre-application).

Applicant respectfully submits that the web template in Yon clearly does not, include data fields, e.g., for specifying a set of goods, selecting one or more substrates, or designating associations between substrates and products and between shades and substrates. Accordingly Applicant submits that Yon fails to disclose or make obvious the nested e-palette of the subject application.

III. “means for filtering the one or more uploaded nested e-palettes” (claim 25)

Applicant notes that the recited “means of filtration” “permits [a] supplier to focus on palette submissions using desired criteria” (page 23 of the specification). Thus, a supplier may, e.g., focus on all nestings for a given color/substrate combination. This filtering ability advantageously enables a supplier to simultaneously prepare submission data for a plurality nestings and/or nested e-palettes even when the e-palettes are uploaded by different specifiers. The system disclosed in Bade does not include nor suggest this functionality. More particularly, since virtual embedded systems do not by nature contain common groupings of components, each invitation to bid must be viewed and addressed separately.

For at least the foregoing reasons, applicant submits that all pending claims patentably distinguish over the proposed combination of Bade and Yon. Reconsideration and withdrawal of the outstanding obviousness rejections is respectfully requested.

b. Proposed Combination of Bade and Yon Represents Impermissible Hindsight

Applicant respectfully submits that the sole rationale for combining Bade and Yon in the manner proposed by the Examiner is Applicant’s disclosure and -- by extension -- the claims-at-issue. To arrive at the combination relied upon in rejecting the claims-at-issue, it is necessary to

ignore core teachings of the cited references, wherein the only basis for doing so is Applicant's disclosure/claims.

As previously discussed, the Bade reference discloses an integrated design environment for designing and testing virtual embedded system using simulated IP components. Thus, Bade discloses a virtual test board which emulates a real design environment. The signals and systems world of electronic design easily lends itself to a computer-based simulation. Color emulation, however, is far more difficult to achieve. Elements such as texture, shading, luster, etc., are not easily embodied in the virtual world. Similarly, the interplay between colors and substrates cannot be theoretically tested in a virtual color lab. Applicant's invention is unique because it seamlessly combines a traditional physical color lab with the advantages of e-palettes. Bade teaches away from combining physical and virtual testing environments. More particularly, the integrated design environment disclosed in Bade is specifically calculated to *eliminate* the need for physical testing. See paragraph [0021]. Therefore, Bade would discourage one skilled in the art from incorporating physical testing elements into specifier/supplier communication system.

Applicant also notes that the subject matter of Bade is so remote from that of Yon that one of ordinary skill in the art would not have thought to combine the references absent the present disclosure. More particularly, Bade discloses a general network-based bidding system ("a web-based service [that] may be used to invite sellers to provide a quote for a specific design, in a request-for-quote (RFQ scenario);" paragraph [0207]). Beyond this general concept, however, Bade discloses little with respect to the focus of the subject application. Indeed the request-for-quote and the bidding response in Bade differ extensively from the color-specific uploading of a nested e-palette and/or submission data presented in the subject application or the application-specific paint order forms of Yon. Thus, in contrast with the general system in Bade,

the subject application discloses a narrowly tailored system for enabling a specifier to define, manage, and interrelate color/material attributes, e.g., for a product-line (using the novel construct of a nested e-palette); even the process by which suppliers respond to uploaded e-palettes is application-specific involving, *inter alia*, physically testing color samples and matching spectral data.

Applicant notes that there are conceptual differences, as well, between generating a color palette for a product line and designing an embedded virtual system. More particularly, a product-line is often designed to include a number of different embodiments, e.g., for color variety. A virtual system of IP components, on the other hand, is designed with a focus on efficiency and optimal performance. Since the IP components in Bade serve practical rather than aesthetic purposes, the design process is linear rather than tangential. Thus, conceptually it would have been difficult to adapt a linear design system to fit an application requiring parallel design.

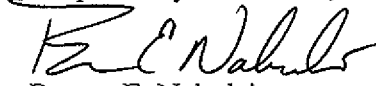
As noted above, the differences between the generalized bidding board in Bade and the specific color-based applications in Yon are vast and unbridgeable absent the present disclosure. Applicant therefore submits that the outstanding obviousness rejections based on the proposed combination of Bade and Yon represents impermissible hindsight on the part of the examiner, and should be withdrawn. Prompt action consistent therewith is respectfully requested.

CONCLUSION

Applicant respectfully submits that all pending claims are now in condition for allowance. Prompt action leading to an early Notice to that effect is earnestly solicited. If the Examiner believes that personal communication will expedite the prosecution, the Examiner is respectfully requested to contact the undersigned at the number listed below.

Date: March 18, 2009

Respectfully Submitted,



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